

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

GULF MARINE FABRICATORS, LP.	§	
	§	
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	C.A. NO. 2:16-cv-00430
	§	
THE ATP INNOVATOR, ET AL	§	
	§	
<i>Defendants.</i>	§	

**RESPONSE TO GULF MARINE FABRICATORS, LP’S OPPOSED MOTION TO
SCHEDULE THE SALE OF THE ATP INNOVATOR FOR APRIL 16, 2018**

NOW INTO COURT, through undersigned counsel, comes ASRC Energy Services Omega, LLC (hereinafter “Omega”), who respectfully submits this Response to Gulf Marine Fabricators, LP (hereinafter “Gulf Marine”) Opposed Motion to Schedule the Sale of the ATP INNOVATOR for April 16, 2018, and avers as follows:

1. On March 6, 2018, the Court issued an Order on Motion for Interlocutory Sale, granting Gulf Marine’s request for the interlocutory sale of the INNOVATOR under Rule E(9) of the Supplemental Rules for Admiralty and maritime Claims of the Federal Rules for Civil Procedure. [R. Doc. 95].
2. At this time, the INNOVATOR is subject to maritime liens arising from unpaid layberth fees and other services and equipment provided by Gulf Marine; *custodia legis* for dockage and services provided to the INNOVATOR post-arrest; and a preferred ship mortgage granted by the owner of the INNOVATOR, Amerindo Services, LTD. and Blue Sky Langsa, LTD, to a third party which was subsequently assigned to Omega.
3. Gulf Marine requests the Court set a minimum bid in the amount of \$3,000,000.00 USD for the sale of the INNOVATOR. However, this amount is

insufficient to cover Gulf Marine's unpaid layberth and *custodia legis* fees, as well as the amount owed Omega by the promissory note.

4. The principal amount owed Omega through the assigned promissory note is \$1,125,438.25 USD plus interest and attorney fees. Omega estimates principal, interest and attorney fees combined, through March 31, 2018, as \$1,600,000.00 USD.

5. The minimum bid should be at a level sufficient to cover the amount of the liens and all associated costs and expenses. *See Caterpillar Fin. Servs. Corp. v. Coleman*, No. 99-03821, 1999 WL 33218595, at *2-3 (C.D. Cal. Aug. 19, 1999). *See also Jefferson Bank & Trust Co. v. Van Niman*, 722 F.2d 251 (C.A. 5 (La.), 1984) (remanding a case to the District Court to reconsider whether the minimum price of a sale to satisfy multiple claimants was grossly inadequate).

6. Omega requests the Court set a minimum bid of \$4,600,000.00 USD for the sale of the INNOVATOR, which is sufficient to cover the amount Omega's claims as well as Gulf Marine's claims.

7. In the alternative, Omega requests the Court order an appraisal of the INNOVATOR prior to setting a minimum sale price. Gulf Marine does not identify a value of the INNOVATOR and, to the best of Omega's knowledge, has not had the vessel appraised. Appraising the vessel would ensure that a grossly inadequate price is not obtained through the sale.

8. Gulf Marine requests the sale of the ATP INNOVATOR be set on April 16, 2018 because that date is "the earliest available date for the auction of the INNOVATOR."

9. April 16, 2018 is three and a half (3 1/2) weeks away from the date of filing of Gulf Marine's Motion. This allows only two (2) weeks to advertise the sale which could have the deleterious effect of producing a limited number of potential buyers. A limited

number of buyers jeopardizes the ability to sell the ATP INNOVATOR for the amount necessary to cover the claims of both Omega and Gulf Marine.

10. Omega called the United States Marshal for the Southern District of Texas, Corpus Christi Division, and spoke with Deputy Taschner. Deputy Taschner advised the Marshals Service prefers setting the auction at least thirty (30) days from the date of request to allow the completion of all necessary paperwork in preparation for the auction and sale. Deputy Taschner has advised that the entirety of May is available.

11. Omega requests the date of interlocutory sale of the INNOVATOR be set at a mutually agreeable date by both Gulf Marine and Omega, in May 2018, and that the United States Marshal for the Southern District of Texas, Corpus Christi Division is authorized to sell the INNOVATOR free and clear of all liens with all proceeds to be deposited into the registry of the Court pending further order by this Court.

Respectfully submitted,

BROWN SIMS

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded to all attorneys of record on this 23rd day of March 2018, via U.S. certified mail return receipt requested:

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**FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

GULF MARINE FABRICATORS, LP.	§	C.A. NO. 2:16-cv-00430
	§	
<i>Plaintiff,</i>	§	IN ADMIRALTY
	§	FRCP 9(h) and RULE C
vs.	§	
	§	
THE ATP INNOVATOR, ET AL	§	
<i>Defendants.</i>	§	

ORDER

Considering the above and foregoing Opposed Motion to Schedule Sale of the ATP INNOVATOR on April 16, 2018;

IT IS HEREBY ORDERED that the Motion is **GRANTED** and that the U.S. Marshals Service is directed to sell the ATP INNOVATOR, bearing IMO No. 742 and Official No. 575567, her tackle, furniture, apparel, appurtenances, etc., *in rem* (the “INNOVATOR”), to the highest bidder at public auction pursuant to this *in rem* decree, with a minimum bid of \$4,600,000.00 and minimum bid increments of \$10,000; or *in the alternative*,

IT IS FURTHER ORDERED that an appraisal of the INNOVATOR occur, with Gulf Marine and Omega splitting the cost of same equally.

IT IS FURTHER ORDERED that the auction will be held on the ____ day of _____, 2018 at ____ in the lobby of the U.S. District Court, 1133 N. Shoreline Boulevard, Corpus Christi, Texas.

IT IS FURTHER ORDERED Gulf Marine Fabricators, LP will advertise the auction in the Corpus Christi Caller Times newspaper in accordance with the current

Local Rules of this Court. The costs of advertisement and an affidavit of publication will constitute taxable costs in this action and recoverable as *custodia legis* from the sale proceeds of the INNOVATOR.

IT IS FURTHER ORDERED that the auction will be conducted in accordance with Local Admiralty Rules, which are incorporated by reference into this Order. In the event of default by the highest bidder in consummating the purchase, the deposit will be forfeited and placed into the Registry of the Court pending further order of the Court.

IT IS FURTHER ORDERED that the INNOVATOR will be sold “as is, where is,” and free and clear of all liens, encumbrances, and pre-existing claims on the INNOVATOR, whether recorded or not.

IT IS FURTHER ORDERED that Compass Marine Services LLC (“Compass”) is appointed sole broker for the purpose of advertising and marketing the INNOVATOR and Compass will be paid a commission of one percent (1 %) of the amount for which the INNOVATOR sells at auction. Such commission shall be paid from the proceeds of sale as a *custodia legis* expense.

IT IS FURTHER ORDERED that the purchaser of the INNOVATOR will be and shall remain a citizen of the United States as defined by the Shipping Act of 1916, as amended and recodified at 46 U.S.C. 50501 and any and all successor statutes, and any and all regulations promulgated under any thereof, and qualified under applicable law to engage in the trade in which the INNOVATOR is engaged, or, if not, the purchaser will within such time allowed by the Court obtain the consent and approval of the United States Department of Transportation, Maritime Administration (“MARAD”) to the sale of the vessel, and the purchaser shall bear all expenses, including any insurance costs,

pending further orders of the Court. In the event that permission from MARAD is not obtained, the purchaser shall be refunded its deposit; and the INNOVATOR shall be awarded to the second-highest bidder at auction.

IT IS FURTHER ORDERED that anyone wishing to inspect the INNOVATOR must first present himself or herself, along with photo identification, to the office of the U.S. Marshals Service, 1133 N. Shoreline Boulevard, Corpus Christi, Texas, and/or the Substitute Custodian. The INNOVATOR presently lies afloat at 1982 FM Rd. 2725, Aransas Pass, Texas 78336, at or about the intersection of the Intracoastal Waterway and the Corpus Christi Ship Cannel at Mile Marker 36.

IT IS FURTHER ORDERED that all charges incurred by the United States Marshal, Gulf Marine Fabricators, LP, and other parties funding the United States Marshal's costs and those fees and costs of the arrest of the INNOVATOR, including the fees and costs for wharfage and other services for the INNOVATOR, and the fees and costs of the substitute custodian with respect to the INNOVATOR during the period of arrest, shall be expenses of the sale which shall be taxed as costs of *custodia legis* against the proceeds of the sale.

IT IS FURTHER ORDERED that the proceeds of the sale will remain in the Registry of the Court in an interest bearing account pending further order of the Court.

Corpus Christi, Texas, this ____ day of _____, 2018.

U.S. DISTRICT COURT JUDGE